

EXECUTION VERSION

POWER SALES AGREEMENT

between

Cherokee County Cogeneration Partners, LLC

and

Duke Energy Carolinas, LLC
526 South Church Street
Charlotte, North Carolina 28201-1006

Cherokee Facility

July 1, 2013 – December 31, 2020

June 28, 2012

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Attachments:

Attachment 1 – Description of Unit of Designated Capacity Resource

Attachment 2 – Sample Availability Index and Monthly Payment Calculations

**POWER SALES AGREEMENT
BETWEEN
CHEROKEE COUNTY COGENERATION PARTNERS, LLC
AND
DUKE ENERGY CAROLINAS, LLC**

THIS AGREEMENT, is made and entered into this 28th day of June, 2012, by and between CHEROKEE COUNTY COGENERATION PARTNERS, LLC, a limited liability company existing under the laws of the State of Delaware (hereinafter referred to as "Seller"), and DUKE ENERGY CAROLINAS, LLC, a limited liability company existing under the laws of the State of North Carolina (hereinafter referred to as "Duke Energy Carolinas"), Seller and Duke Energy Carolinas being individually and collectively referred to as, respectively, a "Party" or the "Parties."

WITNESSETH:

WHEREAS, Seller owns the Designated Capacity Resource which as of the date of this Agreement is a "qualifying facility" under PURPA;

WHEREAS, Seller and Duke Energy Carolinas are parties to the Purchased Power Agreement dated August 26, 1994, as amended (the "Existing PPA"), under which Seller is selling to Duke Energy Carolinas capacity and energy from the Designated Capacity Resource under the provisions of PURPA; and

WHEREAS, the Existing PPA will terminate on June 30, 2013;

WHEREAS, Seller desires to sell capacity and energy from the Designated Capacity Resource to Duke Energy Carolinas after the termination of the Existing PPA under the provisions of PURPA;

WHEREAS, the Parties have negotiated and agreed upon the terms and conditions of such sale set forth herein below under the provisions of PURPA;

WHEREAS, the Seller and Duke ET have entered into a Large Generator Interconnection Agreement dated January 1, 2011 which governs the interconnection of the Designated Capacity Resource to the Duke ET System;

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the Parties hereto mutually contract and agree as follows:

ARTICLE 1 – DEFINITIONS

The following terms shall have the respective meanings set forth below:

1.1 Affiliate: Affiliate means, with respect to any person, any other person (other than an individual) that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means

the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interest having ordinary voting power.

1.2 Agreement: Agreement means this Power Sales Agreement, including, when applicable, any amendments and attachments hereto that the Parties may execute now or at any time in the future.

1.3 Bankrupt: Bankrupt means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.4 Baseload Operation: "Baseload Operation" means the hours during a Scheduled Energy Request that include only those hours during which the Designated Capacity Resource is dispatched at maximum capability at then current conditions.

1.5 Billing Month: Billing Month means the period beginning on the first day and extending through the last day of each calendar month during the Term of this Agreement.

1.6 Business Day: Business Day means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.

1.7 Claiming Party: Claiming Party shall have the meaning set forth in Section 11.3.

1.8 Collateral Assignee: Collateral Assignee shall have the meaning set forth in Section 16.2.

1.9 Contract Capacity: The Contract Capacity shall be equal to the actual maximum net output capability of the Designated Capacity Resource (but not to exceed 86 MW) tested in accordance with industry standard protocols while burning the Fuel and adjusted to Contract Ambient Conditions, as measured at the Delivery Point. The Contract Ambient Conditions-adjusted results of any subsequent net output capability performance test, conducted in accordance with Sections 4.7.1 and 4.7.3, will then become the revised Contract Capacity.

1.10 Contract Ambient Conditions: Contract Ambient Conditions shall mean 95 degrees Fahrenheit dry bulb temperature, 40% relative humidity, and standard barometric pressure given the project site elevation. Contract Ambient Conditions are the reference conditions to which all performance tests (capacity and heat rate) shall be adjusted.

1.11 Defaulting Party: Defaulting Party shall have the meaning set forth in Section 12.1.

1.12 Delivered Energy: Delivered Energy shall mean energy, in MWh, actually delivered to Duke Energy Carolinas at the Delivery Point in each hour pursuant to Duke Energy Carolinas' Scheduled Energy Requests. Such Delivered Energy shall be as measured by the meter readings from the Designated Capacity Resource.

1.13 Delivery Point: The Delivery Point shall be the point of connection between the Designated Capacity Resource and the Duke ET System.

1.14 Designated Capacity Resource: Designated Capacity Resource shall mean the natural gas fueled combined cycle cogeneration facility located in Gaffney, South Carolina and known as Cherokee.

1.15 Duke Energy Carolinas: Duke Energy Carolinas shall have the meaning set forth in the introductory paragraph to this Agreement.

1.16 Duke ET: Duke ET shall mean Duke Energy Carolinas, LLC (Transmission) or its successor transmission provider.

1.17 Duke ET System: The Duke ET System means the integrated system of electric transmission lines and substations presently owned and operated by Duke ET.

1.18 Dynamic Schedule: For purposes of this Agreement, a method of transmission scheduling whereby the capacity and energy received by Duke Energy Carolinas at the Delivery Point is equal to the real-time output of the generating unit, less any applicable transmission losses and requires real-time data transfer from the Designated Capacity Resource to Duke Energy Carolinas' Bulk Power Marketing trading floor or successor facility.

1.19 Emergency Response Rate: The Emergency Response Rate is the maximum rate of load change, expressed in megawatts per minute, that a Unit can achieve under extreme conditions. The Emergency Response Rate shall be consistent with the manufacturer's specifications and recommendations and shall be further defined in the operating procedures.

1.20 Event of Default: Event of Default shall have the meaning as described in Section 12.1.

1.21 Existing PPA: Existing PPA shall have the meaning set forth in the recitals to this Agreement.

1.22 FERC: FERC shall mean the Federal Energy Regulatory Commission, or any successor to its functions.

1.23 Force Majeure: Force Majeure shall have the meaning set forth in Sections 11.1 and 11.2.

1.24 Forced Outage: Forced Outage means the removal from service availability, in whole or in part, of a Unit of the Designated Capacity Resource whereby the Unit is not capable of fully operating at its rated capability due to emergency reasons or a condition in which a Unit of the Designated Capacity Resource is unavailable due to unanticipated failure of equipment necessary for operation.

1.25 Fuel: Fuel shall mean natural gas.

1.26 Fuel Price: “Fuel Price” means the *Gas Daily* index for “Transco Zone 4” as posted for the day of delivery (expressed in \$/MMBtu). If no weekend or holiday period price is published, the index prices for weekends and holidays shall be the prices as published for the day following the weekend or holiday. Fuel Price shall also include all variable commodity costs (including the Commodity Rate per dt applicable to the Transco Agreement) associated with transporting natural gas pursuant to the Transco Agreement.

1.27 Generation Emergency Condition: Generation Emergency Condition shall mean a condition in which an actual or impending loss of Duke Energy Carolinas’ generation supply is reasonably expected to result in an inability of Duke Energy Carolinas to meet its firm load obligations.

1.28 Heat Rate: Heat Rate means the millions of Btus (MMBtu) used to produce one MWh of energy at the Designated Capacity Resource.

1.29 Heat Rate Cap: Heat Rate Cap means 8.3 MMBtu/MWh.

1.30 Heat Rate Make-Whole Payment: Heat Rate Make-Whole Payment shall have the meaning set forth in Section 5.2.4.

1.31 Imaged Agreement: Imaged Agreement shall have the meaning set forth in Section 17.15.

1.32 ITP: ITP means independent transmission provider.

1.33 Letter of Credit: “Letter of Credit” means an unconditional irrevocable transferable letter of credit naming a Party as the sole beneficiary, issued by a major United States commercial bank or foreign commercial bank with a United States office and in a form reasonably acceptable to Duke Energy Carolinas, with a minimum of one billion U.S. Dollars capital and surplus, in each case with a credit rating of at least A- by S&P or A3 by Moody’s.

1.34 Liquidated Damages: “Liquidated Damages” has the meaning given to it in Section 12.6.2.

1.35 Minimum Creditworthiness: A credit rating of at least “BBB-” from S&P or “Baa3” from Moody’s.

1.36 Moody’s: Moody’s shall mean Moody’s Investors Service, Inc.

1.37 NERC: NERC shall mean the North American Electric Reliability Corporation, or any successor to its functions.

1.38 New Transmission Organization: New Transmission Organization shall have the meaning set forth in Section 7.3.

1.39 Non-Defaulting Party: Non-Defaulting Party shall have the meaning set forth in Section 12.2.

1.40 Non-Peak Period: October 1 through May 31.

1.41 Normal Response Rate: The Normal Response Rate is defined as the rate of load change, expressed in megawatts per minute, that a Unit can achieve for normal loading purposes. The Normal Response Rate shall be consistent with the manufacturer's specifications and recommendations, and shall be further defined in the operating procedures.

1.42 Operating Committee: Operating Committee shall have the meaning set forth in Section 4.5.

1.43 Party or Parties: Party or Parties shall have the meaning set forth in the introductory paragraph to this Agreement.

1.44 Peak Period: June 1 through September 30.

1.45 Project Lender: Project Lender shall have the meaning set forth in Section 16.2.

1.46 Prudent Industry Practices: Prudent Industry Practices shall mean any of the practices, methods, standards and acts (including, but not limited to, the practices, methods, standards and acts engaged in or approved by a significant portion of the electric power generation industry in the United States) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, could have been expected to accomplish the desired result consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts generally conform to operation and maintenance standards recommended by a facility's equipment suppliers and manufacturers, applicable facility design limits and applicable governmental approvals and law.

1.47 PSCSC: PSCSC shall mean the Public Service Commission of South Carolina, or any successor to its functions.

1.48 PURPA: PURPA means the Public Utilities Regulatory Policies Act, 16 U.S.C. §2601 *et seq.* (2005), as amended, including amendments included in the Energy Policy Act of 2005.

1.49 Replacement Price: Replacement Price means (a) the price at which Duke Energy Carolinas, acting in a commercially reasonable manner, purchases a replacement for any Scheduled Energy not delivered by Seller, plus (i) costs reasonably incurred by Duke Energy Carolinas in purchasing such replacement energy and (ii) additional transmission charges, if any, reasonably incurred by Duke Energy Carolinas to have energy delivered Into Duke, or, at Duke Energy Carolinas' option, (b) the market price for energy delivered Into Duke as determined by Duke Energy Carolinas in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Duke Energy Carolinas be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability. For the purposes of this definition, Duke Energy Carolinas shall be considered to have purchased replacement energy to the extent Duke

Energy Carolinas shall have entered into one or more arrangements in a commercially reasonable manner whereby Duke Energy Carolinas repurchases its obligation to sell and deliver the Scheduled Energy to another party.

1.50 S&P: S&P shall mean Standard & Poor's Ratings Group, a division of McGraw-Hill, Inc.

1.51 Scheduled Energy: Scheduled Energy means energy, in MWh, requested by Duke Energy Carolinas for delivery at the Delivery Point in each hour pursuant to a Scheduled Energy Request submitted to Seller by Duke Energy Carolinas in accordance with the provisions of Article 6 hereof; and shall include, for the purposes of calculating the Monthly Capacity Payment, energy deemed to be scheduled to the extent that Seller is prevented from making any part of the Contract Capacity available or delivering any Scheduled Energy as a result of a Force Majeure claimed by Seller or a Forced Outage that lasts longer than thirty (30) consecutive days as further described in Section 5.1; and shall not include hours when no part of the Contract Capacity is available for scheduling in accordance with Article 6 hereof due to (i) a Scheduled Maintenance Outage, or (ii) a Force Majeure declared by Duke Energy Carolinas.

1.52 Scheduled Energy Request: Scheduled Energy Request shall have the meaning provided such term in Section 6.2.

1.53 Scheduled Maintenance Outage: Scheduled Maintenance Outage means a time period, in accordance with Section 4.3, during which the Designated Capacity Resource is planned in advance and scheduled to be shut down for facility maintenance.

1.54 Seller: Seller shall have the meaning set forth in the introductory paragraph to this Agreement.

1.55 Successful Start: Successful Start is defined as an attempted start of the Designated Capacity Resource that results in the Designated Capacity Resource synchronizing to the transmission system and achieving an output level of at least 90% of the maximum output capability at then current conditions within 1 hour of the start of a Scheduled Energy delivery period and that results in the delivery of at least 50% of the Scheduled Energy integrated over the first two hours of the Scheduled Energy Request in accordance with the provisions set forth in Section 6.2 and the operating procedures developed by the Operating Committee, unless the Parties have mutually agreed on an output level less than the Contract Capacity.

1.56 Taxes: Taxes shall mean any or all ad valorem, property, occupation, severance, emissions, generation, first use, conservation, Btu or energy, transmission, utility, gross receipts, privilege, sales, use, excise and other taxes, governmental charges, licenses, fees, permits and assessments, other than taxes based on net income or net worth.

1.57 Term: Term shall mean the term of this Agreement as set forth in Article 2.

1.58 Transco Agreement: Transco Agreement shall have the meaning set forth in Section 4.4.2.

1.59 Unit: Unit means a generating unit of the Designated Capacity Resource.

1.60 VOMP: VOMP shall have the meaning set forth in Section 5.2.2.

ARTICLE 2 – TERM OF AGREEMENT

2.1 Term: The term of this Agreement shall begin July 1, 2013, and end December 31, 2020, unless terminated earlier pursuant to the provisions of this Agreement.

ARTICLE 3 – CAPACITY AND ENERGY TO BE PURCHASED AND SOLD

3.1 Capacity: Subject to the other provisions of this Agreement, Seller agrees to sell and Duke Energy Carolinas agrees to purchase, generating capacity in the amount of the Contract Capacity from the Designated Capacity Resource for the Term.

3.2 Energy: Subject to the other provisions of this Agreement, Seller agrees to sell and deliver and Duke Energy Carolinas agrees to purchase and receive, energy for the Term as requested by Duke Energy Carolinas in its Scheduled Energy Requests in accordance with Article 6 hereof. Energy deliveries shall be equal to the actual maximum net output capability of the Designated Capacity Resource at the prevailing ambient conditions at the time of delivery.

3.3 Rights of Use of the Designated Capacity Resource: During the Term of this Agreement, the total output of the Designated Capacity Resource shall be available exclusively for Duke Energy Carolinas' use at all times for the purpose of meeting Scheduled Energy Requests.

ARTICLE 4 – OPERATING STANDARDS

4.1 General: Seller shall, or shall cause its agents or contractors to, operate, inspect, maintain, and repair the Designated Capacity Resource in accordance with manufacturers' recommendations, Prudent Industry Practices, and the environmental permit(s) issued for the Designated Capacity Resource by the relevant government agency.

4.2 Notice of Outages: Promptly upon Seller becoming aware of any present or future outage of the Designated Capacity Resource for any reason, or Seller's present or future inability to deliver energy hereunder for any other reason, Seller shall give to Duke Energy Carolinas notice of such outage or such inability and the likely duration of such outage or such inability. Seller shall keep Duke Energy Carolinas informed as to the likely timing of the termination of such outage or such inability and shall give to Duke Energy Carolinas notice of such termination.

4.3 Limitations on Scheduled Maintenance: No Scheduled Maintenance Outages shall occur between June 1 and September 30 of any year. In addition, the Parties shall agree upon the date and time selected for all Scheduled Maintenance Outages and the Parties shall use reasonable judgment in asking for and agreeing to Scheduled Maintenance Outages. Unless otherwise agreed to in advance by Duke Energy Carolinas, Scheduled Maintenance Outages shall be made known to Duke Energy Carolinas 1 year in advance and the actual scheduling of a Scheduled Maintenance Outage shall be made 5 weeks in advance for minor inspection outages and 6 months in advance for major inspection outages. The actual scheduling of Scheduled Maintenance Outage will be coordinated and determined by the Operating Committee.

4.4 Fuel and Fuel Transportation:

4.4.1 Fuel Purchasing: Duke Energy Carolinas will purchase at its expense all Fuel required for the operation of the Designated Capacity Resource. Duke Energy Carolinas will be responsible for Fuel scheduling and delivery to the Designated Capacity Resource; and Seller will cooperate to the extent reasonably necessary to achieve efficient scheduling of Fuel to the Designated Capacity Resource.

4.4.2 Fuel Transportation:



4.5 Operating Committee:

4.5.1 Duke Energy Carolinas and Seller shall form a committee to act in matters relating to the sale and purchase of capacity and energy under this Agreement (“Operating Committee”), including without limitation to implement the provisions of and to administer this Agreement in accordance with the Parties’ intent to minimize costs associated with operation of the Designated Capacity Resource. Each Party shall appoint at least one representative and one alternate representative to serve on the Operating Committee; however, each Party shall be equally represented. The Parties shall notify each other in writing of such appointments and any changes thereto. The Operating Committee shall have no authority to modify the terms or conditions of this Agreement. The Operating Committee shall meet as frequently as it deems necessary and shall endeavor to reach its decisions by consensus and in accordance with Prudent Industry Practice; provided, however, that the representative of either Party shall not be required to agree to a decision that would adversely impact the safe and reliable operation of the Designated Capacity Resource, the Duke ET System, or any other applicable control areas. The Operating Committee may consult with representatives of Duke ET or any other applicable transmission provider as appropriate in reaching its decisions, provided that such consultation shall not violate any regulatory standards of conduct applicable to any generation and transmission entities.

4.5.2 Seller shall disclose to the Operating Committee any condition or defect at the Designated Capacity Resource that may cause the Designated Capacity Resource to be unable to meet Duke Energy Carolinas’ Scheduled Energy Requests.

4.6 Communications and Data Transfer: For the duration of this Agreement, Seller shall provide and maintain (for the purposes of this Agreement) communication circuits to Duke Energy Carolinas' Regulated Portfolio Optimization trading floor or successor facility for the purpose of data acquisition and voice communications. Duke Energy Carolinas shall have the right to approve such equipment and inspect its installation. Such approval right shall expire upon the final testing and check-out of the system. The Operating Committee shall develop and implement procedures to enable such data transfer.

4.7 Designated Capacity Resource Testing: This Section outlines the general areas of inspection and testing for the Designated Capacity Resource.

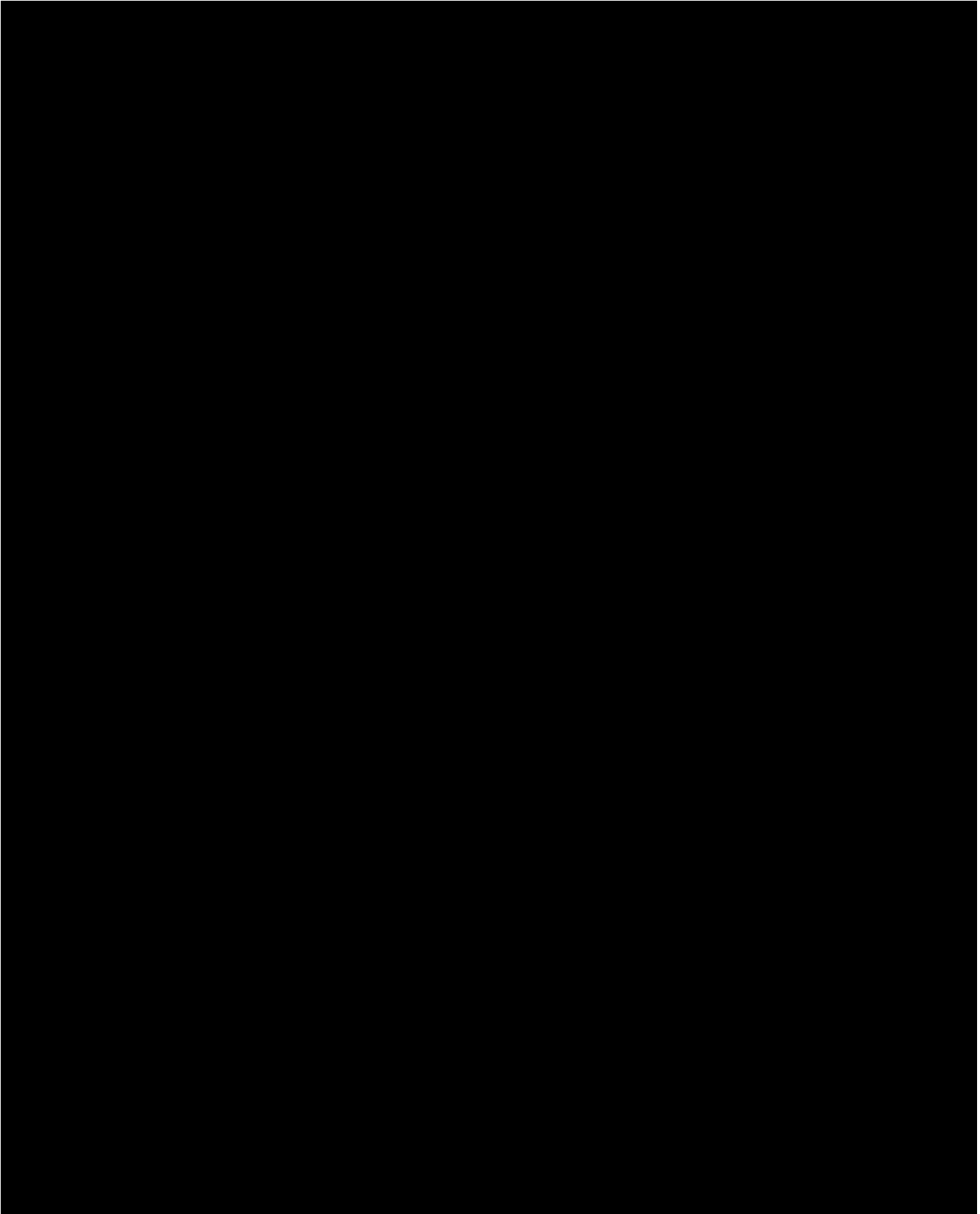
4.7.1 Performance Testing: Seller shall be responsible for the initial performance tests to determine Contract Capacity as described in Section 1.9. Seller, at its expense, may conduct subsequent performance tests to reestablish Contract Capacity. Duke Energy Carolinas shall purchase all energy produced in connection with such tests at a mutually agreeable price as long as Duke Energy Carolinas shall have agreed to the timing of the testing and as long as it is operationally feasible for Duke Energy Carolinas to take such energy.

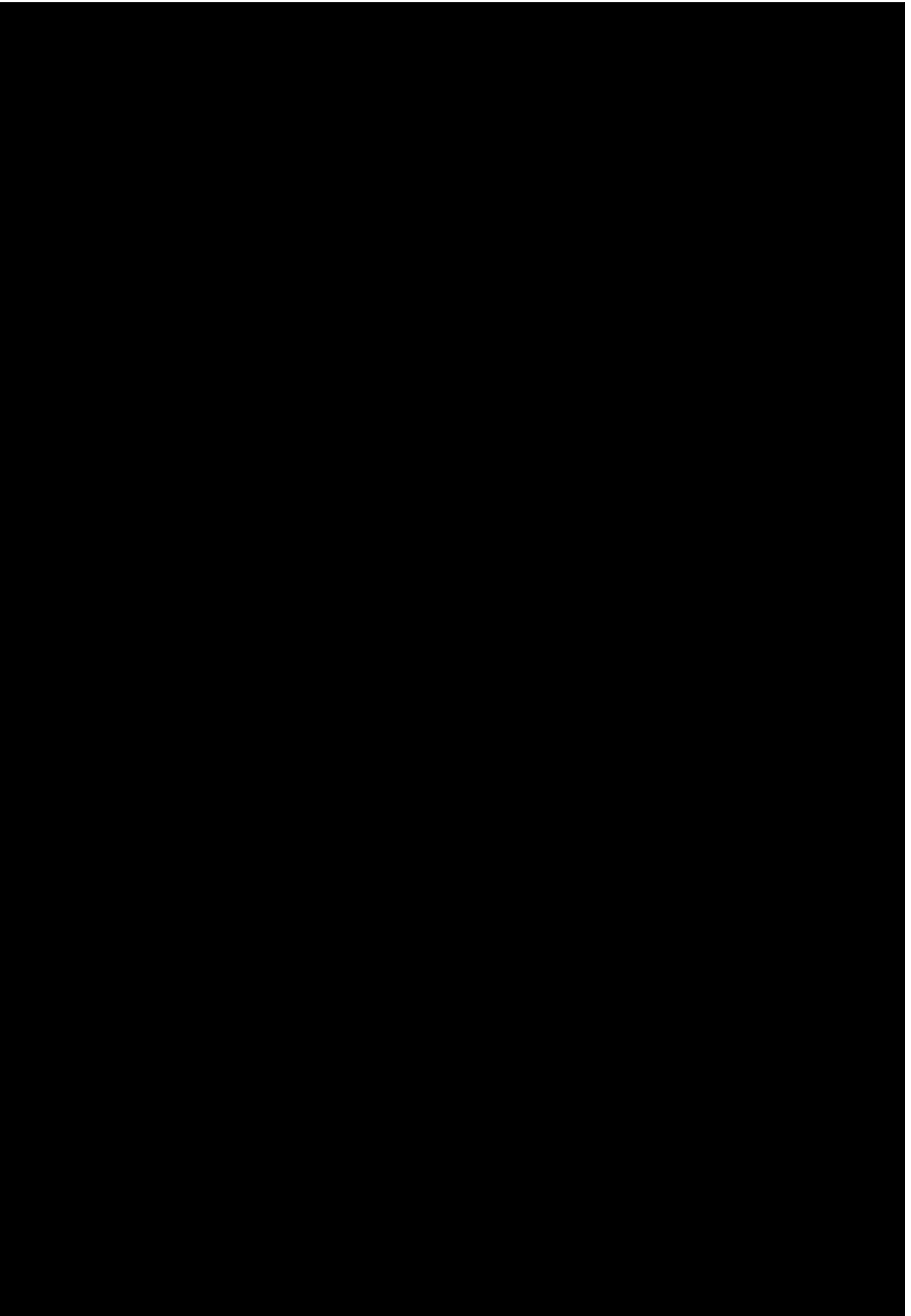
4.7.2 Routine and Operational Testing: Seller shall perform routine inspection and testing of the Designated Capacity Resource in accordance with Prudent Industry Practices. Seller may also (i) perform operational testing, on an as needed basis, to ensure Unit reliability following maintenance and other outages; and (ii) operate the Designated Capacity Resource for the purpose of maintaining permits, efficiency standards, and/or operating licenses, with Duke Energy Carolinas' approval, not to be unreasonably withheld or delayed. All inspection, testing and operation performed under this Section 4.7.2 will be done at Seller's expense. Duke Energy Carolinas shall purchase all energy produced in connection with such tests and operation at a mutually agreeable price as long as Duke Energy Carolinas shall have agreed to the timing of the testing and operation and as long as it is operationally feasible for Duke Energy Carolinas to take such energy.

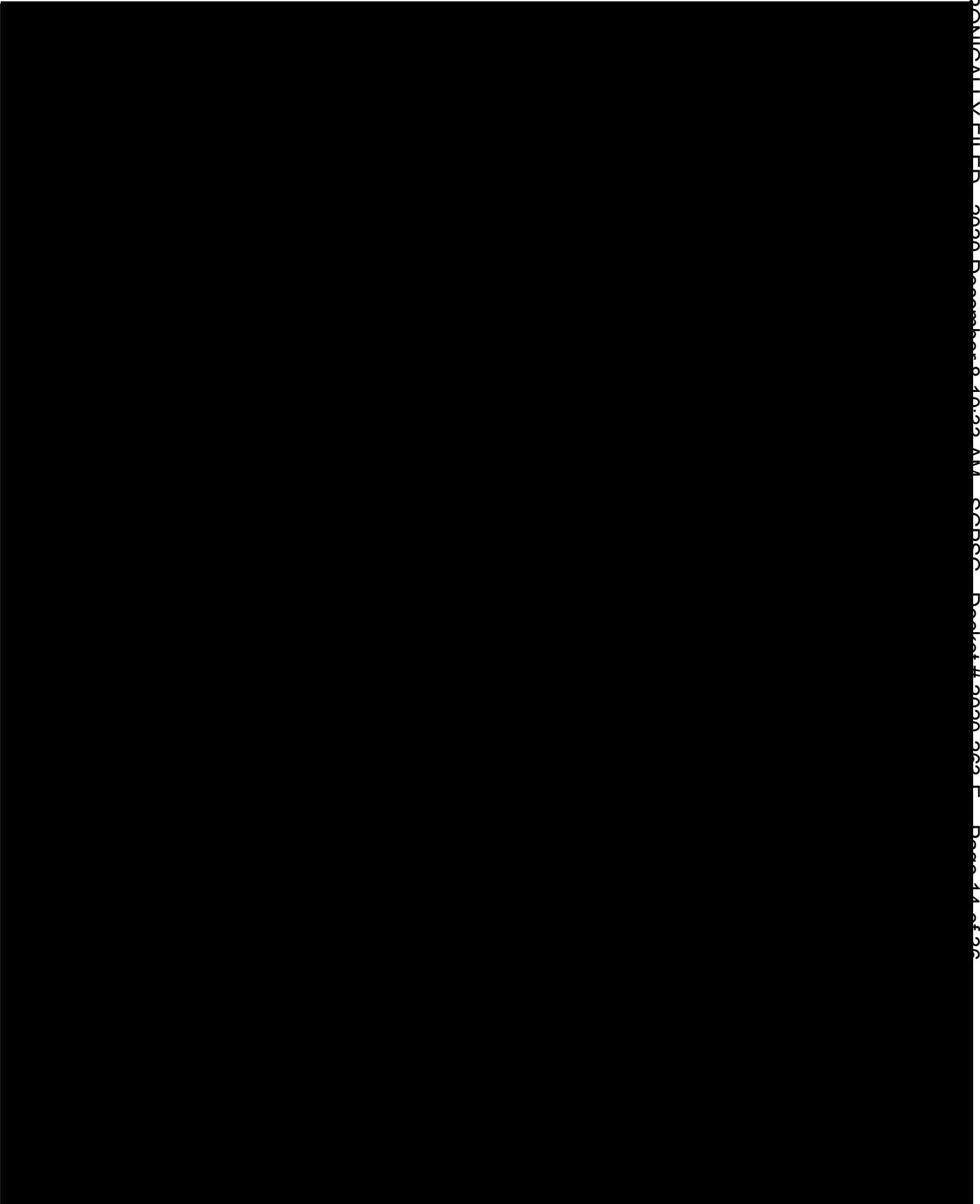
4.7.3 Duke Energy Carolinas Requested Testing: Duke Energy Carolinas may request an inspection and testing of the Designated Capacity Resource or a performance test to reestablish Contract Capacity two (2) times per calendar year provided reasonable notice is given to Seller. All inspection and testing performed under this Section 4.7.3 will be done at Duke Energy Carolinas' expense and the energy produced shall be purchased by Duke Energy Carolinas under the provisions of Section 5.2.

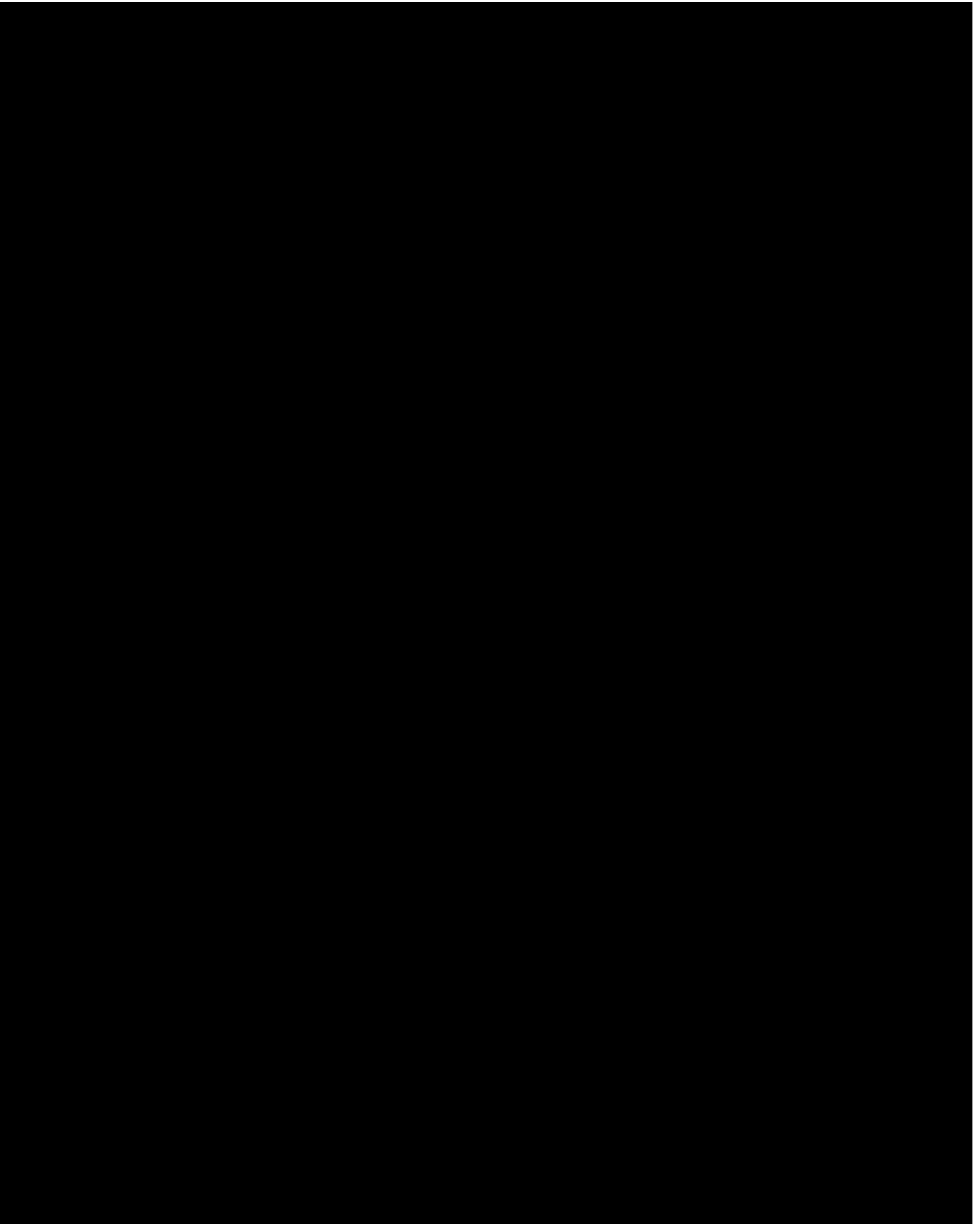
4.7.4 Duke Energy Carolinas' Right to Observe Testing: Duke Energy Carolinas shall have the right to observe capacity performance tests at the Designated Capacity Resource and the right to review the results of such tests. Seller shall notify Duke Energy Carolinas in advance of such testing unless, in Seller's reasonable judgment, the testing must be performed immediately, in which case Seller shall provide notice as soon as practicable. Duke Energy Carolinas may have a representative attend and be present during such testing.

ARTICLE 5 – PAYMENT FOR CAPACITY AND ENERGY









ARTICLE 6 – SCHEDULING

6.1 Dynamic Schedule: Seller will arrange for the Designated Capacity Resource to be capable of utilizing a Dynamic Schedule, or a method of scheduling that is substantially equivalent, to Duke Energy Carolinas. The Unit(s) will be dynamically telemetered, or shall be capable of providing data in real-time and in a substantially similar method, to Duke Energy Carolinas at all times during the Term of this Agreement. Duke Energy Carolinas agrees that the method of scheduling and providing data that exists at the Designated Capacity Resource on the date this Agreement is executed by both Parties satisfies the obligations of this Section 6.1.

6.2 Scheduled Energy Request: Duke Energy Carolinas shall submit requests for energy delivery which designate the quantity of energy, in MWh, to be delivered for each hour pursuant to the provisions of Article 6 (“Scheduled Energy Request”), provided that Duke Energy Carolinas shall not be permitted to submit a Scheduled Energy Request for hours when no part of the Contract Capacity is available due to (i) a Scheduled Maintenance Outage, or (ii) a Force Majeure declared by Duke Energy Carolinas. Scheduling shall normally be done by the method described in Section 6.2.1. Intra-day scheduling, however, will be permitted in accordance with Section 6.2.2. All Scheduled Energy Requests shall be submitted by Duke Energy Carolinas to Seller in a written manner as established by the Operating Committee.

6.2.1 Day-Ahead: Duke Energy Carolinas shall request and schedule generating capacity and associated energy deliveries with Seller by 9 am Eastern Prevailing Time on the previous day, unless otherwise agreed by Seller and Duke Energy Carolinas.

6.2.2 Intra-Day: The normal scheduling provisions of Section 6.2.1 notwithstanding, Duke Energy Carolinas may request and schedule energy deliveries with Seller for intra-day service or make intra-day schedule changes provided, however, that Duke Energy Carolinas shall bear all reasonable additional costs of such service, if any. In the event of a Generation Emergency Condition, Seller shall, upon request of Duke Energy Carolinas, use commercially reasonable efforts to start and ramp the Designated Capacity Resource at its Emergency Response Rate so as to deliver to Duke Energy Carolinas the maximum output of the Designated Capacity Resource at the then-prevailing ambient conditions within thirty (30) minutes of Duke Energy Carolinas’ notice.

6.3 Hourly Quantities: Unless otherwise mutually agreed by the Parties, Duke Energy Carolinas shall submit Scheduled Energy Requests in increments nominally equal to the amount of energy associated with the full output capability of the Designated Capacity Resource each hour, taking into account (i) ramping at the Normal Response Rate (except as provided in Section 6.2.2) at the start of the schedule period; (ii) a normal ramp-down at the end of the schedule period; and (iii) the fact that Duke Energy Carolinas will receive the full output capability of the Designated Capacity Resource. Schedules and ramping shall be consistent with the Duke ET open access transmission tariff. [REDACTED]

ARTICLE 7 – TRANSMISSION SERVICE

7.1 Duke Energy Carolinas Responsibilities. Duke Energy Carolinas shall arrange, contract, and pay for all transmission and related services required to receive the capacity and associated energy on the Duke Energy Carolinas side of the Delivery Point. Duke Energy Carolinas shall bear all costs and risks associated with transmission and distribution on the Duke Energy Carolinas side of the Delivery Point. For the purposes of and during the Term of this Agreement, Duke Energy Carolinas shall pursue, designate and maintain the unit of the Designated Capacity Resource listed in Attachment 1 as network resources for Duke Energy Carolinas.

7.2 Seller's Responsibilities. Seller, or its designee, shall arrange, contract, and pay for all transmission and related services required to deliver the capacity and energy associated with Scheduled Energy Requests to the Delivery Point. Seller shall bear all costs and risks associated with transmission and distribution of Scheduled energy up to the Delivery Point. For purposes of and during the Term of this Agreement, Seller shall make commercially reasonable efforts to permit Duke Energy Carolinas to designate the unit of the Designated Capacity Resource as network resources for Duke Energy Carolinas.

7.3 New Transmission Organization. The Parties recognize that this Agreement has been negotiated prior to the implementation of all or any portion of the possible creation of an ITP, regional transmission organization, or other regional transmission organization encompassing the Duke Energy Carolinas balancing authority area ("New Transmission Organization"). The implementation or creation of a New Transmission Organization will not affect the validity of this Agreement. If additional transmission charges result from the implementation or creation of a New Transmission Organization, including congestion charges necessary to deliver Scheduled Energy to the Delivery Point at the same or most comparable level of firmness as before such implementation or to transmit Scheduled Energy from the Delivery Point, this Agreement will remain in full force and effect and the Parties' respective responsibilities for transmission costs as stated under Section 7.1 will remain in effect. However, Seller and Duke Energy Carolinas agree to modify any operational terms of this Agreement to the extent required by the implementation of a New Transmission Organization, while maintaining cost responsibility for transmission charges as contemplated herein and the original intent of the Parties in this Agreement.

ARTICLE 8 – BILLING AND PAYMENT

8.1 Timing and Method of Payment: Seller will render to Duke Energy Carolinas invoices for all payments or other charges due hereunder on a Billing Month. Seller will make best efforts to issue invoices for a Billing Month on or before the fifth (5th) business day of the following month, and such invoices will be payable by Duke Energy Carolinas fifteen (15) days after issuance of invoice. All remittances for payment shall be made via immediately available funds to the account of Seller at the bank designated by Seller on the invoice, unless otherwise agreed.

8.2 Late Payment: Amounts owed by Duke Energy Carolinas and not disputed, if not remitted within the time period specified under Section 8.1 above, shall be subject to a late payment charge based on the rate of interest calculated as provided in Section 17.5 hereof.

8.3 Disputed Billings: In case any portion of an invoice submitted pursuant to Section 8.1 hereof is in bona fide dispute, Duke Energy Carolinas may withhold payment of the disputed portion until such dispute is resolved. For each disputed payment, Duke Energy Carolinas shall provide Seller with a written statement of its grounds for disputing a bill prior to the due date of the invoice. Upon determination of the correct amount, any such amount plus interest shall be paid within two (2) business days. Interest shall accrue as provided in Section 17.5 hereof from the original invoice due date until the date of actual payment.

8.4 Adjustments: If any overcharge or undercharge in any form whatsoever shall at any time be found and the statement therefor has been paid, the Party that has been paid the overcharge shall refund the amount of the overcharge paid plus interest and the Party that has been undercharged shall pay the amount of the undercharge plus interest, within thirty (30) days after final determination thereof; provided, however, no retroactive adjustment shall be made for any overcharge or undercharge beyond a period of twenty-four (24) months from the date of the statement on which such overcharge or undercharge was first included. Interest shall accrue as provided in Section 17.5 hereof from the original due date until the day of actual adjustment payment.

8.5 Audit Rights: The Parties shall keep complete and accurate records, tags, meter readings and memoranda of their operations under this Agreement and shall maintain such data for a period of at least two (2) years after the completion of each Billing Month hereunder. Either Party shall have the right to examine and inspect all such records, meter readings and memoranda insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of all relevant data, estimates, statements or charges submitted to it hereunder upon reasonable advance notice during normal business hours at the auditing Party's expense.

8.6 Netting and Setoff. If the Parties are required to pay any amount on the same day or in the same Billing Month under this Agreement, then such amounts with respect to each Party may be aggregated and the Parties may discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount may pay to the other Party the difference between the amounts owed. The obligations to make payments under this Agreement may be offset against each other, set off or recouped therefrom.

ARTICLE 9 – TAXES

9.1 Obligation of the Parties: Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with their intent to minimize Taxes, so long as neither Party is materially adversely affected by such efforts. Either Party, upon written request of the other, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from Taxes, and shall use reasonable efforts to obtain and cooperate with obtaining any exemption from or reduction of Tax. Either Party with knowledge of a Tax on the purchase or sale of power that may be applicable to transactions under this Agreement and affecting the other Party's obligations under this Agreement shall notify the other Party in advance of such transactions of the applicability of such Tax and shall also notify the other Party of any proposal to implement new Taxes or apply an existing Tax to the purchase, sale, delivery, or receipt of power hereunder.

9.2 Allocation of Tax Responsibility: Unless otherwise provided herein, as between the Parties, Seller shall be responsible for all costs, Taxes, and charges of any kind relating to the delivery of energy, capacity, transmission and/or related services prior to the Delivery Point, whether federal, state or local. Duke Energy Carolinas shall be responsible for all costs, Taxes, and charges of any kind relating to the receipt of energy, capacity, transmission, and/or related services at and beyond the Duke Energy Carolinas side of the Delivery Point, whether federal, state or local, including but not limited to state “gross receipts” taxes.

ARTICLE 10 – CREDIT MATTERS

10.1 Letter of Credit: 

10.2 Return of Letter of Credit: Duke Energy Carolinas shall return the Letter of Credit on or before the date that is the earlier of (a) the final date of the Term of this Agreement, (b) a replacement Letter of Credit is delivered to Duke Energy Carolinas, and (c) fifteen (15) business days after the date on which Seller has paid Duke Energy Carolinas all amounts owed to Duke Energy Carolinas under this Agreement. Duke Energy Carolinas shall execute such documentation as reasonably requested to release the Letter of Credit.

ARTICLE 11 – FORCE MAJEURE; FORCED OUTAGE

11.1 Definition: “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under this Agreement, which event or circumstance was not within the reasonable control of, or the result of the negligence of, the Party claiming Force Majeure (the “Claiming Party”), and which cannot be overcome or avoided or caused to be avoided by the Claiming Party’s exercise of due diligence.

11.2 Limitation: Force Majeure shall not be based on (i) the loss of Duke Energy Carolinas’ markets; (ii) Duke Energy Carolinas’ inability economically to use or resell the product purchased hereunder; (iii) the loss or failure of Seller’s supply or the failure of Seller’s equipment, unless such loss or failure is due to rising water, flood, tremor, earthquake, wind storm, tornado, tropical storm, hurricane, hail, snow storm, blizzard, lightning strikes, fire resulting from natural causes, sabotage, terrorism, war or regulation or restriction imposed by governmental, military or lawfully established civilian authorities, action of any court or governmental authority, and otherwise meets the criteria for Force Majeure set forth in Section 11.1; (iv) Seller’s ability to sell the product at a price greater than the price set forth in this Agreement; (v) events or conditions which affect the cost of complying with this Agreement, including, but not limited to, changes or modifications made by the action of any regulatory agency or governmental authority that increase or decrease Seller’s costs or limit total operating

hours of the Designated Capacity Resource, changes in other costs of operating the Designated Capacity Resource or changes in Fuel costs; (vi) financial or monetary constraints or inability of either Party to pay its debts as they come due; or (vii) a labor dispute.

Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a transmission or Fuel provider unless (i) such Party has contracted for firm transmission with a transmission provider for the product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "Force Majeure" or "uncontrollable force" or a similar term as defined under the transmission provider's tariff; provided, however, that existence of the foregoing factors solely shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish a Force Majeure as defined in Section 11.1.

11.3 Excused Performance: To the extent either Party is prevented by Force Majeure or Forced Outage from carrying out, in whole or part, its obligations under this Agreement and such Party (the "Claiming Party") gives notice of the Force Majeure or Forced Outage to the non-Claiming Party within twenty-four (24) hours of the Claiming Party's awareness of the Force Majeure or Forced Outage, then, unless the terms hereof specify otherwise, the Claiming Party shall be excused from the performance of its corresponding obligations with respect to this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure or Forced Outage) until the remedy of the Force Majeure or Forced Outage. As soon as possible, the Claiming Party shall give the non-Claiming Party full details of the cause, nature, and likely duration of the Force Majeure or Forced Outage. The Claiming Party shall remedy the Force Majeure or Forced Outage with all reasonable dispatch and shall give immediate written notice to the non-Claiming Party of the termination of the Force Majeure or Forced Outage. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure or Forced Outage until the remedy of the Force Majeure or Forced Outage.

11.4 Extended Outages Due to Force Majeure: In no event will any delay or failure of performance caused by any conditions or events of Force Majeure or Forced Outage extend this Agreement beyond its stated term.

11.4.1 If a delay or failure of performance caused by a Force Majeure or Forced Outage is not cured within 180 days from the date of the occurrence of such Force Majeure or Forced Outage, and Seller has not implemented a reasonable course of action to remedy the situation, as certified by an independent engineer, then the non-Claiming Party may, at any time following the end of such 180-day period, terminate this Agreement upon written notice to the Claiming Party, without further obligation by the terminating Party except as to costs and balances incurred prior to the effective date of such termination.

11.4.2 If a delay or failure of performance caused by a Force Majeure or Forced Outage is not cured within 180 days from the date of the occurrence of such Force Majeure or Forced Outage, and Seller has implemented a reasonable course of action to remedy the situation, as certified by an independent engineer, then Seller shall have an additional one hundred and eighty (180) days to make the Designated Capacity Resource available. If a

delay or failure of performance caused by a Force Majeure or Forced Outage is not cured within 360 days from the date of the occurrence of such Force Majeure or Forced Outage following the procedures set forth in Section 11.4.2, then the non-Claiming Party may, at any time following the end of such 360-day period, respectively, terminate this Agreement upon written notice to the Claiming Party, without further obligation by the terminating Party except as to costs and balances incurred prior to the effective date of such termination.

- 11.4.3 During an extension of time beyond the 180 days for repair of the Designated Capacity Resource pursuant to Section 11.4. 2, the Claiming Party may request written notification from the non-Claiming Party regarding its intention not to terminate the Agreement under this Section 11.4 pending completion of such repair. As soon as the Claiming Party becomes aware that it will be unable to resume its performance that is excused by Force Majeure within 360 days from the date of the occurrence of such Force Majeure, the Claiming Party shall notify the non-Claiming Party of such circumstances. Within 30 days of such notification, the non-Claiming Party shall notify the Claiming Party as to whether it will terminate this Agreement at the conclusion of such 360-day period or whether, and for how long, it will extend such period.

ARTICLE 12 – DEFAULT

- 12.1 Events of Default: An Event of Default shall mean, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:

12.1.1 the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) days after written notice;

12.1.2 any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated unless remedied within thirty (30) days after written notice;

12.1.3 Seller’s failure to deliver all of the energy from the Designated Capacity Resource when requested by Duke Energy Carolinas in accordance with the scheduling provisions of Article 6 when such failure is due to Seller’s willful nonperformance and not when such failure is (i) excused by reason of a Force Majeure event or circumstance pursuant to Article 11 hereof; (ii) due to a Forced Outage; or (iii) due to a Scheduled Maintenance Outage;

12.1.4 the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default as set forth in this Section 12.1), if such failure is not remedied within thirty (30) days after written notice;

12.1.5 unavailability of the Designated Capacity Resource for 180 days for any reason other than a Force Majeure provided that if the Designated Capacity Resource is not available at the end of such one hundred and eighty (180) days, and Seller has implemented a reasonable course of action to remedy the situation, as certified by an

independent engineer, then Seller shall have an additional one hundred and eighty (180) days to make the Designated Capacity Resource available;

12.1.6 such Party becomes Bankrupt;

12.1.7 (i) Seller fails to provide the Letter of Credit as required by Section 10.1; (ii) if, after providing such Letter of Credit, Seller fails to maintain such Letter of Credit as required by Section 10.1; (iii) the Letter of Credit expires or is terminated or in any way ceases to secure the obligations of Seller under this Agreement or; (iv) if applicable, the Letter of Credit provider fails to perform any obligation or covenant set forth in the Letter of Credit provided that for (i), (ii) and (iii) above, such failure shall only constitute an Event of Default if such failure is not remedied within fifteen (15) days after written notice to Seller.

12.1.8 such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

12.1.9 RESERVED

12.1.10 RESERVED

12.1.11 the default of a Party under any other agreement between the parties including, but not limited to, any commodity or financial derivative agreement or transaction if such default is not remedied within thirty (30) days after written notice.

12.2 Remedies for Default: If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to give notice to the Defaulting Party which designates a day, no earlier than the day such notice is effective and no later than sixty (60) days after such notice is effective, as an early termination date to terminate this Agreement if the Event of Default is not cured, and (ii) withhold any payments due to the Defaulting Party under this Agreement. Upon termination, (a) if Seller is the Defaulting Party under Section 12.1.5, Duke Energy Carolinas shall be entitled to draw upon the Letter of Credit, as its sole and exclusive remedy and neither Party shall have any further liabilities with respect to this Agreement, except as provided in Section 12.7, (b) if Seller is the Defaulting Party under Section 12.1.1, 12.1.2, 12.1.3, 12.1.4, 12.1.6, 12.1.7, 12.1.8, 12.1.9, 12.1.10, or 12.1.11, Duke Energy Carolinas shall be entitled to draw upon the Letter of Credit and seek all remedies available at law or in equity, subject to the limitations set forth herein, (c) if Duke Energy Carolinas is the Defaulting Party, Seller shall be entitled to seek all remedies available at law or in equity, subject to the limitations set forth herein.

12.3 RESERVED

12.4 RESERVED.

12.5 RESERVED.

12.6 Limitation of Liability:

12.6.1 Consequential Damages. Neither Party shall be liable to the other, whether in contract, in tort (including negligence and strict liability), under any warranty or otherwise, for damages for loss of profits or revenue, loss of use of any property, cost of capital, or other similar consequential damages.

12.6.2 Liquidated Damages. The Parties hereby acknowledge that the terms, conditions and amounts fixed for damages payments as provided in Sections 5.1, 5.2.4 and 12.2(a) ("Liquidated Damages") are reasonable, and are agreed upon by the Parties because of the difficulty or impossibility of ascertaining the exact amount of damages actually sustained and because otherwise obtaining an adequate remedy would be difficult or inconvenient. The Parties agree that the Liquidated Damages are not penalties and shall be applicable regardless of the amount of damages sustained.

12.7 Damages for Failure to Deliver Energy: If there is an Event of Default under Section 12.1.3, then Seller shall pay to Duke Energy Carolinas, on the date payment would otherwise be due in respect of the month in which the failure occurred, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Energy Payment for the Scheduled Energy not delivered hereunder from the Replacement Price. As soon as reasonably practicable, Duke Energy Carolinas shall deliver to Seller a statement explaining in reasonable detail the calculation of the amount owed. The remedies set forth in this Section 12.7 are in addition to and not exclusive of any other remedy set forth in this Agreement. Payment by Seller of such amount shall not be considered a cure of such Event of Default and shall not affect Duke Energy Carolinas' right to exercise all its remedies for such Event of Default as set forth in this Agreement.

ARTICLE 13 – ARBITRATION

13.1 Negotiation: The Parties will attempt in good faith to resolve any dispute arising out of or relating to this Agreement through prompt negotiations.

13.2 Arbitration: Any unresolved controversy or claim arising out of or relating to this Agreement shall be settled by arbitration in accordance with the Rules of the American Arbitration Association to the extent not inconsistent with the rules specified herein.

13.2.1 Each Party shall choose one arbitrator within twenty (20) days of either Party's written notice to the other to arbitrate, and within ten (10) days after both such arbitrators are chosen, such arbitrators shall choose a third arbitrator who shall act as chair. Any arbitrator chosen shall be a disinterested party with knowledge of the energy industry.

13.2.2 Any arbitration hereunder shall be conducted in Charlotte, North Carolina.

13.2.3 Either Party may conduct discovery to the extent reasonably necessary to avoid surprise and to provide reasonable access to necessary information or to information likely to be presented during the course of the arbitration.

13.2.4 The arbitrators shall conduct a hearing and shall then accept sealed written resolutions of the subject dispute from each Party on a confidential basis to be submitted within five (5) days after the completion of the hearing. The written submissions shall be in a form and subject to any limitations as may be prescribed by the arbitrators. The arbitrators shall then choose only one of the proposed solutions, (without modification) as the fairest solution to the dispute within ten (10) days of receipt of the written submissions of both Parties. A majority vote shall govern and the decision of the arbitrators shall be final and binding.

13.2.5 Any expenses incurred in connection with hiring the arbitrators shall be shared and paid equally between the Parties. Each Party shall bear and pay its own expenses incurred by each in connection with the arbitration, unless otherwise included in a solution chosen by the arbitration panel. In the event either Party must file a court action to enforce an arbitration award under this Article, the prevailing Party shall be entitled to recover its court costs and reasonable attorney fees.

13.2.6 The existence, contents or results of any arbitration hereunder may not be disclosed without the prior written consent of both Parties.

ARTICLE 14 – STANDARD OF REVIEW; CHANGES IN LAW

14.1 Public Interest Standard: Absent the agreement of both Parties to the proposed change, the standard of review for changes to this Agreement proposed by a Party, a non-party or the FERC acting sua sponte shall be the “public interest” standard of review set forth in *Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County*.


14.2 Changes in Law:

14.2.1 Emissions:

[REDACTED]

14.2.2 Other Changes in Law:

[REDACTED]



14.3 Filing Agreement with PSCSC: Pursuant to Ordering Paragraph 3 of the PSCSC Order No. 81-214 issued in Docket No. 80-251-E, this Agreement is required to be filed by Duke Energy Carolinas with the PSCSC within ten (10) days of its execution. Duke Energy Carolinas shall use commercially reasonable efforts to satisfy such filing requirement and shall provide Seller with written notice promptly following the satisfaction of such filing requirement.

14.4 Review by PSCSC: Pursuant to PSCSC Orders Nos. 81-214 and 85-347 issued in Docket No. 80-251-E, this Agreement is subject to review by the PSCSC upon complaint by either Party, or pursuant to its own motion, and the terms herein may be modified in whole or in part or declared null and void by the PSCSC.

14.4.1 Provision of Information to PSCSC: Duke Energy Carolinas reserves the right to provide to the PSCSC, upon request, information pertaining to this Agreement including but not limited to: (i) records of the Designated Capacity Resource's generation output and Duke Energy Carolinas' purchases thereof (including copies of monthly statements of power purchases and data from load recorders and telemetering installed at the Designated Capacity Resource and (ii) information relating to the Fuel Price. Duke Energy Carolinas will advise Seller of such furnishing of any information.

14.4.2 Cooperation with PSCSC: Seller and Duke Energy Carolinas agree to work together in good faith to support the filing of this Agreement with the PSCSC, including providing response to any information requests, data requests, requests for interviews, and participation in any investigation, hearing or appeal, as applicable.

14.4.3 Termination: In the event that the PSCSC issues an order or other such regulatory directive with modification, suspension, investigation or other condition that has a material adverse effect on either Party, then the Parties agree to negotiate in good faith for a period of thirty (30) days an amendment to this Agreement that complies with such PSCSC order or directive. If the Parties cannot reach an agreement, either Party may terminate this Agreement upon notice to the other Party and neither Party shall have any obligation, duty or liability to the other arising hereunder under any claim or theory whatsoever except as to costs and balances incurred prior to the effective date of such termination.

ARTICLE 15 – REPRESENTATIONS AND WARRANTIES

15.1 Representations and Warranties: At all times beginning with the date of this Agreement and ending at the end of the Term except as set forth below, each Party represents and warrants to the other Party that:

15.1.1 it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

15.1.2 it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

15.1.3 the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation order or the like applicable to it;

15.1.4 this Agreement, and each other document executed and delivered in accordance with this Agreement constitute its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses; and

15.1.5 as of the date of this Agreement, there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement.

15.2 Representations and Warranties: At all times beginning with the date of this Agreement and ending at the end of the Term, Seller represents and warrants to Duke Energy Carolinas that:

15.2.1 [REDACTED]

15.2.2 [REDACTED]

ARTICLE 16 – ASSIGNMENT

16.1 Assignment and Release: Either Party may assign its rights and obligations under this Agreement and be released from liability hereunder only after all of the following conditions have been met:

16.1.1. The assignee expressly assumes all of the obligations of the assignor.

16.1.2 The assignee or a guarantor of all the assignee's obligations under this Agreement shall meet the Minimum Creditworthiness requirements.

16.1.3. In the case of an assignment by Seller, the assignee shall have substantial experience, and have a record which demonstrates reasonable proficiency, in generating and marketing electrical energy in Duke Energy Carolinas' reasonable discretion.

16.2. Finance Assignments: Seller shall have the right to collaterally assign this Agreement to an entity providing financing for the Designated Capacity Resource ("Project Lender") or any

Project Lender's agent (each such assignee being referred to herein as a "Collateral Assignee"); provided, however, that no such assignment shall be effective for purposes of this Section until Seller shall have notified Duke Energy Carolinas of such assignment, which notice shall include the name and address of the Collateral Assignee. The making of an assignment pursuant to this Section shall not be deemed to constitute an assignment or transfer of this Agreement, nor shall any Collateral Assignee, as such, be deemed to be an assignee or transferee of this Agreement so as to require such Collateral Assignee, as such, to assume the performance of any of the terms or conditions on the part of Seller to be performed hereunder; but the purchaser at any sale of this Agreement in any proceedings for the foreclosure of any assignment, or the assignee or transferee of this Agreement under any instrument of assignment or transfer in lieu of the foreclosure of any assignment, shall be deemed to be, and the Collateral Assignee in exercise of any of its remedies against Seller may elect to be, an assignee or transferee within the meaning of this Section and shall be deemed to have agreed to perform all of Seller's obligations to be performed hereunder. In connection with such assignment, Duke Energy Carolinas agrees to furnish to the Project Lender, at Seller's cost, such written information, certificates, consents, affidavits and other like documents as Seller may reasonably request, including without limitation a consent to collateral assignment that grants the Project Lender the right to cure a Seller Event of Default before Duke Energy Carolinas can terminate this Agreement.

ARTICLE 17 – MISCELLANEOUS

17.1. Governing Law: The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the applicable laws of the State of North Carolina.

17.2. Confidentiality: Neither Party shall disclose the terms of this Agreement to any third party, including Affiliates, (other than such Party's or its Affiliates' employees, lenders, counsel, accountants, or other advisors that need to know such information and are bound by a duty of confidentiality) except in order to comply with any applicable law, order, regulatory or exchange rule. Notwithstanding the foregoing, Seller may disclose the terms of this Agreement to potential purchasers of the Designated Capacity Resource, Seller or its owners, but only after such potential purchaser agrees to keep the terms of this Agreement confidential by executing a confidentiality agreement with terms and protections no less favorable than the terms contained in this Section 17.2. Each Party shall notify the other Party of any proceeding of which it is aware that may result in disclosure and shall use reasonable efforts to prevent or limit such disclosure.

17.3. Section Headings Not to Affect Meaning: The descriptive headings of the various articles and sections of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions thereof.

17.4. Computation of Time: In computing any period of time, prescribed or allowed by this Agreement, the designated period of time shall begin to run on the day immediately following the day of the act, event or default that precipitated the running of the designated period of time. The designated period shall expire on the last day of the period so computed unless that day is a Saturday, Sunday, or NERC holiday, in which event the period shall run until the end of the next weekday.

17.5. Interest: Whenever the provisions of this Agreement require the calculation of an interest rate, such rate shall be computed at an annual rate equal to the prime rate, as quoted in the *Wall Street Journal* as of the date on which the calculation begins, plus one percent (1%), but not to exceed the maximum rate which may be lawfully charged.

17.6. Entire Agreement: This Agreement including the Attachments constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes any other agreements, written or oral, between the Parties concerning such subject matter.

17.7. Counterparts: This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

17.8. Right of Access: Seller hereby agrees to give Duke Energy Carolinas, during the term of this Agreement, the same rights it has of ingress and egress at reasonable times to and from the Designated Capacity Resource site for purposes of inspecting any buildings or facilities constructed thereon. Duke Energy Carolinas shall give Seller a written five-day advance notice before exercising its right of access established here unless otherwise agreed by the Parties.

17.9. Amendments: This Agreement may only be amended by written agreement signed by an authorized representative of both Parties.

17.10. Waivers: Waivers of the provisions of this Agreement or excuses of any violations of the Agreement shall be valid only if in writing and signed by an authorized officer of the Party issuing the waiver or excuse. A waiver or excuse issued under one set of circumstances shall not extend to other occurrences under similar circumstances.

17.11. No Partnership Created: Notwithstanding any provision of this Agreement, the Parties do not intend to create hereby any joint venture, partnership, association taxable as a corporation, or other entity for the conduct of any business for profit, and if it should appear that one or more changes to this Agreement would be required in order not to create an entity referenced to above, the Parties agree to negotiate promptly and in good faith with respect to such changes.

17.12. Notices: Any notice, demand, request, payment, statement, or correspondence provided for in this Agreement, or any notice which a Party may desire to give to the other, shall be in writing (unless otherwise provided) and shall be considered duly delivered when received by mail, facsimile, electronic funds transfer or overnight courier, at the addresses listed below:

(i) To Cherokee County Cogeneration Partners, LLC:

LS Power Equity Advisors, LLC
Two Tower Center, 11th Floor
East Brunswick, New Jersey 08816

Attention: Senior Vice President and General Counsel

(ii) To Duke Energy Carolinas:

Duke Energy Carolinas
526 South Church Street – EC01K
P.O. Box 1006
Charlotte, North Carolina 28201-1006

Attention: Director, Supply Side Resources

Each Party shall provide the other with all names; telephone and facsimile numbers necessary for its performance under this Agreement; and either Party may change the information shown in this section by giving written notice to the other Party.

17.13. Survival: Any provision(s) of this Agreement that expressly or by implication comes into or remains in force following the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

17.14. Construction: The language used in this Agreement is the product of both Parties' efforts and each Party hereby irrevocably waives the benefit of any rule of contract construction which disfavors the drafter of a contract or the drafter of specific language in a contract.

17.15. Imaged Agreement: Any original executed Agreement, schedule confirmation or other related document may be photocopied and stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidence on paper, the schedule confirmation, if introduced as evidence in automated facsimile form, the transaction tape, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the transaction tape, the schedule confirmation or the Imaged Agreement (or photocopies of the transcription of the transaction tape, the schedule confirmation or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under either the hearsay rule, the best evidence rule or other rule of evidence.

17.16. Notice of Proceedings: Each Party shall promptly notify the other Party of any pending or anticipated federal or state regulatory, judicial or administrative actions, including but not limited to notice of violations relative to the Designated Capacity Resource, which could affect either Party's ability to carry out its obligation hereunder. Seller shall promptly notify Duke Energy Carolinas of any pending or threatened legal proceedings which are likely to materially adversely affect Seller's ability to carry out its obligation hereunder.

17.17. No Third Party Beneficiaries: This Agreement is not intended to, and shall not, create rights, remedies or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assigned are solely for the use and benefit of the Parties, their successors in interest or assigns.

17.18. Indemnification: Each Party shall indemnify, save harmless and defend the other Party hereto, including the other Party's parent, subsidiaries, Affiliates, and their respective officers, directors, agents and employees, from and against all claims, demands, costs and expenses (including reasonable attorneys' fees) in any manner, directly or indirectly, connected with or arising from any loss, damage or injury (including death) to any person(s) or property occurring on its side of the Delivery Point to the extent that any such claim, demand, cost, or expense is attributable to any negligent or willful act or omission of the Indemnifying Party or its respective officers, directors, agents, or employees. In event such damage or injury is caused by the joint or concurrent negligence of the Parties hereto, the loss shall be borne by both Parties proportionately to their degree of negligence.

IN WITNESS WHEREOF, Seller and Duke Energy Carolinas have caused this Agreement to be executed in duplicate in their name by their respective duly authorized officials as of the date and year first written above.

**CHEROKEE COUNTY
COGENERATION PARTNERS, LLC**

By: [Signature]
Name: DARPAU KAPADIA
Title: MANAGING DIRECTOR
Date: 6/29/12

DUKE ENERGY CAROLINAS, LLC

By: [Signature] *AW GJR*
Name: Mark A. Svrcek
Title: VP-Wholesale Business & Renewables
Date: 6/28/12

Attachment 1

Description of Unit of Designated Capacity Resource

The Cherokee Facility utilizes one GE Frame 6FA CT and associated electric generator with one Deltek model, two-pressure level HRSG, together with a GE condensing ST operating in combined-cycle mode. The Nameplate MVA for the gas Combustion Turbine is 90 MVA and for the Steam Turbine is 48.5 MVA.

AP-Wholesale Business & Retail Sales

Attachment 2

Sample Availability Index and Monthly Payment Calculations

